

§ 865.116 Records of DRB proceeding.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electro-magnetic records, or a combination thereof.

(b) At a minimum, the record will include the following:

(1) The application for review (DD Form 293).

(2) A record of the testimony in verbatim, summarized, or recorded form at the option of the DRB.

(3) Documentary evidence or copies thereof considered by the DRB other than the military record.

(4) Brief/arguments submitted by or on behalf of the applicant.

(5) Advisory opinions considered by the DRB, if any.

(6) The findings, conclusions, and reasons developed by the DRB.

(7) Notification of the DRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document.

(8) Minority reports, if any.

(9) A copy of the decisional document.

§ 865.117 Final disposition of the record of proceedings.

The original record of proceedings and all appendices thereto shall in all cases be incorporated in the military record of the applicant and returned to the custody of the National Personnel Records Center (NPRC), St. Louis, Missouri. If a portion of the original record cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored.

§ 865.118 Availability of Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with § 865.114 of this subpart, shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available

for public inspection and copying. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(c) The DRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint in accordance with § 865.121 of this subpart.

(d) Any other privileged or classified material contained in or appended to any documents required to be furnished the applicant and counsel/representative or made available for public inspection and copying may be deleted therefrom only if a written statement of the basis for the deletions is provided the applicant and counsel/representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(e) DRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Boards Reading Room. The documents shall be indexed in usable and concise form so as to enable the public and those who represent applicants before the DRB to isolate from all these decisions that are indexed those cases that may be similar to an applicant's case and that indicate the circumstances under and/or reasons for which the DRB or the Secretary of the Air Force granted or denied relief.

(1) The reading file index shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason for, and authority for the discharge. It shall further include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a regional board review. The index shall also be made

available at sites selected for regional Boards for such periods as the DRB is present and in operation. An applicant who has requested a regional board review shall be advised in the notice of scheduled hearings.

(3) The Armed Forces Discharge Review/Correction Board Reading Room shall publish indexes quarterly for the DRB. The DRB shall be responsible for timely submission to the Reading Room of individual case information required for update of indexes. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. This information will be provided to applicants in the notice of acceptance of the application.

(4) Correspondence relating to matters under the cognizance of the Reading Room (including request for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington DC 20310

§ 865.119 Privacy Act information.

Information protected under the Privacy Act is involved in discharge review functions. The provisions of 32 CFR part 286a will be observed throughout the processing of a request for review of discharge or dismissal.

§ 865.120 Discharge review standards.

(a) *Objective of review.* The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither the DRB nor the Secretary of the Air Force shall be bound by any methodology of weighing of the factors in reaching a determination. In each case, the DRB or Secretary of the Air Force shall give full, fair, and impartial consideration to all applicable factors prior to reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

(b) *Propriety.* A discharge shall be deemed to be proper unless in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedures, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the Air Force made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(c) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court), the DRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(d) The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not blind the DRB in its review of subsequent cases because no two cases present the same issues of equity.

(e) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the DRB shall either recharacterize the discharge to honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood v. Secretary of Defense* to determine whether proper grounds exist for the issuance of a less